IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3245 of 1988
With
SPECIAL CIVIL APPLICATION No. 8827 of 1990
With
SPECIAL CIVIL APPLICATION No. 8898 of 1990
With
SPECIAL CIVIL APPLICATION No. 5465 of 1991
With
SPECIAL CIVIL APPLICATION No. 3227 of 1993
With
SPECIAL CIVIL APPLICATION No. 787 of 1995
To
SPECIAL CIVIL APPLICATION No. 803 of 1995
With
SPECIAL CIVIL APPLICATION No. 8017 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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SURAT JILLA MADHYAMIK SHIKASHAK SANGH & 3 - Petitioners
Versus
STATE OF GUJARAT & 2 - Respondents

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Appearance :

1. Special Civil Application No. 3245 of 1988, 8827 & 8898 of 1990, 3227 of 1993.

MR HRIDAY BUCH for MR ND NANAVATY for Petitioners.
MR LB DABHI, AGP for Respondents.

2. Special Civil Application No. 8017 of 1996.

MR HRIDAY BUCH for MR ND NANAVATY for petitioners.
MR LB DABHI, AGP for Respondent Nos. 1,2.
MS SEJAL K MANDAVIA for respondent No. 6.

3. Special Civil Application Nos. 787 to 803 of 1995

MR HRIDAY BUCH for MR ND NANAVATY for petitioners.
MR LB DABHI, AGP for Respondent Nos. 1,2.
MR SP HASURKAR for Respondent No. 4.
MR BB PARMAR for Respondent No. 7.

4. Special Civil Application No. 5465 of 1991

MR HRIDAY BUCH for MR ND NANAVATY for petitioners.
MR LB DABHI, AGP for Respondent Nos. 1.
MR RM DESAI for Respondent No. 2.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 08/02/2006

COMMON ORAL JUDGMENT

1.Since common issue is involved in all these petitions, the same are being heard and disposed of by this common judgment and order.

2.In Special Civil Application No. 3245 of 1988, there are four different associations and they have prayed for the declaration that the members of the respective Union / Association are entitled to get house rent allowance at the rate of Surat classified city.

3.Similarly, Special Civil Application No. 8898 of 1990 is filed by two Professors of Arts, Science & Commerce College Kholavad (Navagam) praying for the direction to the respondents to pay HRA & CLA to the petitioners and other employees whose names are mentioned at Annexure A to the petition, at the rate on which it was being paid to other Govt. employees, taking

into consideration the classification of Surat city and in consonance with the Govt. policy on the subject applicable to the other employees working at Surat.

4.Similarly, Special Civil Application No. 8827 of 1990 is filed by one Mr. C.K. Patel and other 41 persons working in GRGD Sarvajanik Vidyalaya, Sayan, Tal. Olpad, Dist. Surat praying for similar relief as prayed for in Special Civil Application No. 8898 of 1990.

5.Similarly, Special Civil Application No. 5465 of 1991 is filed by one Mr. Dhansukhbhai Narottambhai Patel and one Mr. Oscar Madhusudan Christy and other persons whose names are mentioned at Annexure A to the petition who are all working in M.R.C. High School, Dihen, Tal. Olpad, Dist. Surat.

6.Special Civil Application No. 3227 of 1993 is

filed by Ramesh C. Patel and other 13 persons working in DRGD Sarvajanik Vidyalaya, Sayan, Dist. Surat.

7.Special Civil Application No. 8017 of 1996 is filed by Dakshaben V. Dabhi working as Assistant Teacher at village Shapur, Dist. Junagadh.

8.Special Civil Applications No. 787 to 803 of 1995 are filed by different petitioners working in Junagadh District.

9.Special Civil Applications No. 3245 of 1998, 8827 of 1990, 8898 of 1990, 5465 of 1991 and 3227 of 1993 are in respect of the petitioners claiming HRA & CLA at the rate on which it was being paid to other Govt. employees taking into consideration the classification of Surat city and in consonance with the Govt. policy on the subject applicable to other employees working

at Surat. Special Civil Applications No. 787 to 803 of 1995 and 8017 of 1996 are in respect of the petitioners claiming HRA & CLA at the rate on which it was being paid to other Govt. employees taking into consideration the classification of Junagadh city and in consonance with the Govt. policy on the subject applicable to other employees working at Junagadh city. In Special Civil Applications No. 787 to 803 of 1995, this Court has passed an order on 14.02.1995 restraining the respondents from acting and/or implementing the communication dated 10.01.1995 in any manner whatsoever. The result thereof was that the salary for the month of January 1995 and for the subsequent months was ordered to be paid inclusive of the amount of HRA until further orders. All these petitions were admitted and rule was issued on 15.07.1995 and they were ordered to be heard along with Special Civil Application No. 3245 of 1988 and other allied

matters. The ad-interim relief granted earlier was ordered to be continued and further ad-interim relief was granted restraining the respondents from recovering the amount towards HRA already paid to the petitioners on the condition that each of the petitioners shall file separate undertaking to this Court to the effect that in case the petitioners fail, the amount in question would be paid by them with 15% interest. This Court has passed further order on 24.11.2000 in all these matters directing the petitioners to serve the copy to the respondents and further directing the respondent to treat the copies of the petitions as representation and to decide the same within four weeks from the date of receipt of copies of the petitions as to whether the petitioners were entitled to get CLA & HRA according to the Resolutions and Circulars of the Govt., having regard to the materials on record. The respondents were further directed to convey the

decision within a week from the date of decision to the Court. However, this Court has observed in its order dated 05.12.2005 that no such decision has been taken in the matter. Accordingly, the petitions were taken up for hearing and the same were to be decided on their own merits.

10.Since Special Civil Application No. 3245 of 1988 is first in point of time amongst this group of petitions, the facts are taken from the said petition for the sake of convenience.

11.It is the case of the petitioners that in the year 1975, the Govt. has passed Resolution dated 15.12.1975 by which the Govt. has imposed certain conditions for granting of HRA. By virtue of the said Resolution, the Secondary & Higher Secondary Schools' employees who are working in the said Schools and the schools situated in the proximity of a qualified city

and who have a necessity to reside within the city, are entitled to HRA in that city. A further condition was also imposed that the distance between the place of duty and periphery of the municipal limits of qualified cities does not exceed 8 Kms. It is also one of the conditions that the staff concern have to reside within the qualified city out of necessity, that is for want of accommodation near the place of duty. The petitioners, therefore, submitted that by virtue of the aforesaid Govt. Resolution, teachers who are residing within the periphery of 8 Kms. Were entitled to HRA which is equivalent to the teacher who is residing in the proximity of the qualified city. The aforesaid benefit was also given to all the Govt. servants, Panchayat servants and other Govt. servants. From the year 1975, they have been drawing HRA as per the condition mentioned in the Govt. Resolution dated 15.12.1975. The rate of HRA is varied

from time to time as per Govt. decision and even certain cities are also included in qualified city from time to time by the Govt. by passing necessary resolution.

12.The State Government has passed another Resolution and in the said Govt. resolution, the Govt. has decided that HRA and the CLA will not be payable to the Govt. employees within the area of Urban agglomeration of qualified city as defined in Census Report of 1975 at the rate admissible in the qualified city. It is also resolved that the existing provisions for the payment of HRA under para 1 (iii) of Govt. Resolution dated 15.12.1975 will, however, continue to be applicable only to places which are within 8 Kms. Of Municipal limits of qualified city but which are not included within Urban agglomeration of any city subject to fulfillment of usual conditions laid down therein. The petitioners have, therefore,

submitted that by virtue of the Govt. Resolution dated 01.09.1978, the members of the petitioner Union, namely, Secondary & Higher Secondary Teachers Union who are working in Surat city (UA) are entitled to HRA @ 15% of pay subject to the minimum of Rs. 400/- per month. The petitioners have further pointed out that at the same rate, the Govt. has given HRA to Panchayat servants and also to other Govt. servants. Not only that but even the persons who are residing in a village which is situated within 8 Kms. have also been paid HRA @ 15%. The District Panchayat, Surat have also paid HRA to the Primary teachers, Talatis and other employees who are working under the District Panchayat, Surat. In the whole State of Gujarat, the aforesaid rate was applicable and in whole State every District has paid HRA as per the above mentioned rate. The bare reading of the Govt. Resolution dated 01.09.1978 makes it clear that even if the

employees residing in village which is situated within 8 Kms. from the municipal limit are also entitled to HRA at the rate mentioned above. Inspite of the specific direction issued by the Govt. in a Govt. Resolution dated 01.09.1978, the respondents are denying HRA to those employees who are residing in a village which is situated within 8 Kms. from the Municipal limits and thereby giving unequal treatment which violates Art. 14 of the Constitution of India.

13.It is further submitted that on recommendation of the Third Pay Commission, the Govt. of Gujarat has passed another Resolution on 18.04.1983 and by virtue of the said Resolution, the State government has accepted the recommendation made by the 3rd Pay Commission with regard to CLA & HRA and, therefore, the Govt. has re-classified all cities in Gujarat and the list of such

reclassified cities were also published. By virtue of the said Govt. Resolution, the Surat City (UA) was notified as B-1 class city and, therefore, CLA is payable @ 5% of the pay if the pay is below Rs. 330/-. But if the pay is Rs. 330/- and above, it is @ 4.5% of the pay to the minimum of Rs. 16.85 ps. and maximum to Rs.50/- per month as CLA. With regard to HRA, so far as Surat city is concerned, 15% of the pay subject to maximum of Rs. 400/- per month. The petitioners have, therefore, submitted that the govt. has decided by virtue of the said Resolution dated 18.04.1983 that the said condition and rules prescribed for the withdrawal of CLA and HRA shall continue to apply. It further says that the order shall apply mutatis mutandis to the categories mentioned in the said G.R. Thereafter, vide Govt. Resolution dated 12.09.1984, the Surat City was placed in B-1 class city w.e.f. 1982 and, therefore, there is also a revised rate of

CLA.

14.From the above facts, it has been submitted by Mr. Hriday Buch, learned advocate appearing for the petitioners that the petitioners are entitled to HRA since their School / College is situated within the periphery of 8 Kms. from Surat City. They have produced certificate with regard to the distance from the Collector, Surat and also from the concerned Sarpanch of the Gram Panchayat and accordingly on a subjective satisfaction, respondent No. 3 – District Education Officer has sanctioned HRA and the said benefit was continued till May, 1988. All of a sudden, the respondent No. 3 – D.D.O. by an order dated 11.04.1988 has ordered that the members of the petitioners – Union who are working with the Schools and situated within the periphery of 8 Kms. are not entitled to HRA at old rate and, therefore, the petitioners have filed these petitions before

this Court.

15.He has further submitted that on introduction of revised scale of pay under the Gujarat Civil Service (Revision of pay) Rules 1987, the earlier Govt. Resolution dated 01.09.1978 is deemed to be cancelled. On the contrary, the said resolution is still in force, meaning thereby that the resolution at Annexure B cannot be said to be cancelled by virtue of G.R. dated 01.06.1987. The respondent No.3, after taking shelter of the G.R. Dated 01.06.1987 has now issued an order of recovery of an amount which was paid earlier to the members of the petitioners unions by way of HRA pursuant to the earlier Govt. Resolution. The respondent No. 3 was insisting upon the School management to recover the amount which was paid by way of HRA at one stretch from the members of the petitioners Union. The order of recovery of an amount is illegal, erroneous and

bad in law. The members of the petitioner union have already been paid HRA at the relevant time by virtue of the relevant Government Resolution. Now, therefore, it cannot be said that the aforesaid amount were paid illegally and, therefore, the said amount is required to be recovered from the petitioners.

16.For this purpose, Mr. Buch has relied on the decision of the Hon'ble Supreme Court in the case of *State of Karnataka and another V/s. Mangalore University Non-Teaching Employees' Association and others, (2002) 3 S.C.C. 302* wherein it is held that on the special facts of the present case, the employees of the University have to be protected against the move to recover the excess payments up to 31-3-1997. When the employees concerned drew the allowances on the basis of financial sanction accorded by the competent authority i.e. the

Government and they incurred additional expenditure towards house rent, they should not be penalized for no fault of theirs. It would be totally unjust to recover the amounts paid between 1-4-1994 and the date of issuance of GO No. 42 dated 13-2-1996. Even thereafter, it took considerable time to implement the GO. It is only after 5-3-1997 the Government acted further to implement the decision taken a year earlier. The Court has, therefore, directed that no recovery shall be effected from any of the University employees who were compelled to take rental accommodation in Mangalore city limits for want of accommodation in the university campus up to 31.03.1997.

17.On behalf of the respondents, learned Assistant Government Pleader Mr. L.B. Dabhi as well as learned advocates appearing for the respective Panchayats have placed reliance on the two decisions of this Court. According to

them, the issue raised in all these petitions is squarely covered by the two decisions of this Court. In the case of *N.R. Parikh & Ors. V/s. State of Gujarat & Ors., 2002 (2) G.L.R. 657*, the Court has held that simply because the petitioners were given HRA at the relevant time @ 15% is no ground to continue the said benefits for them indefinitely even though their place of duty is outside the Urban Agglomeration area of the Baroda City and especially when now the benefit of HRA is available to all the employees in the State, irrespective of whether their place of duty is in the City or within the radius of 8 kms. Of such City. The Court, therefore, was of the view that there was a scientific reason for restricting the said benefit of HRA @ 15% to the employees serving in Offices, which are situated in the Urban Agglomeration Area, which is thickly pupulated, wherein it is difficult to get cheaper accommodation. In view of this,

the aforesaid Resolution of the Govt. dated 25.02.2000 cannot be branded as discriminatory, arbitrary or illegal in any manner. It cannot be said that the State has violated the mandate of Art. 14 or Art. 16 of the Constitution by passing the said Resolution. The rates of HRA are always flexible and changed from time to time by way of various Resolutions of the State Govt. By passing the said Resolution, the basic compensatory allowance, which is provided in the B.C.S.R., is not taken away in any manner. It is also required to be noted that, earlier, before passing the Resolution of 25.01.1998, the petitioners were getting HRA @ 7.5% which was subsequently increased to 15%. Even the said benefit was given by way of Government Resolution of 1998. Similarly, now, by the Govt. Resolution, the said benefit is reduced from 15% to 5% so far as the present petitioners are concerned. The Court, therefore, held that the Resolution dated

25.02.2000 was passed after considering the various facts and circumstances of the case. The Court further observed that the staff concerned was supposed to satisfy the authority that he was required to reside the qualified city out of necessity, i.e. for want of accommodation nearer to their place of duty. Since the said clause was found to have been misused and misapplied in many cases, ultimately, it was decided to delete clause 1(iii)(a) of the said Resolution dated 15.12.1975. Such decision, ipso facto, cannot be said to be arbitrary or discriminatory, and, on closer scrutiny of the facts and circumstances of the case, it can be said that it is based on sound principle and on rational ground. Simply because the petitioners might have got HRA at a higher rate is no ground for attacking the said Resolution. Such compensatory allowance can be amended or changed from time to time, looking to the

exigency and as per the situation prevailing at the relevant time. The Court, therefore, dismissed the said petition.

18.Similar view was taken by this Court in the case of *K.B. Zala V/s. State of Gujarat, 2003 (1) G.L.H. 210*. While rejecting the first contention of the petitioners that they are entitled to get HRA @ 15% on the basis of resolution dated 15.12.1975, the Court held that once Resolution dated 15.12.1975 is superseded and cancelled by the State Government as per its resolution, dated 18.05.2000, the petitioner cannot claim 15% HRA on the basis of resolution, dated 15.12.1975 which is superseded and cancelled. While rejecting the second contention raised on behalf of the petitioners that the Resolution dated 18.05.2000 is arbitrary or discriminatory, the Court held that normally the HRA payable to any employee is in the

nature of reimbursement or compensation for providing accommodation or compensation to employee concerned. If the employee is serving in a village area, he may be required to pay less amount in comparison to the employee serving in the city area for the purpose of housing accommodation for himself and his family members. The major purpose of HRA is with a view to see that the employee concerned may be in a position to occupy a house for himself and his family members. It cannot be said that the situation in village or a small centre would be the same in comparison to the city or corporation area. Therefore, if the State Government in exercise of its powers has taken decision of not continuing with the provisions of resolution, dated 15.12.1975 for the purpose of modification of HRA on the ground that only the employees working in the Urban Agglomeration which is an adjacent area to the corporation limits of the city would be

entitled to 15% HRA and not the employees outside, therefore, it cannot be said that such decision of the State Government would be arbitrary or capricious. The Court, therefore, held that the action of the State Government cannot be said to be without any basis or it has no nexus with the objectives sought to be achieved thereof. The Court has also examined the said issue on the touchstone of Art. 14 and held that the issue is already covered by the decision of the Apex Court in the case of State of Karnataka (Supra).

19.On the basis of the aforesaid two judgments of this Court as well as on the basis of the judgment of the Hon'ble Supreme Court, Mr. Dabhi and other advocates appearing for the respondents have strongly urged that the challenge made in the present petition to the subsequent resolutions and claim made on the basis of the resolution dated 15.12.1975 cannot

be held as arbitrary and the amount is required to be recovered from the petitioners.

20.After having heard learned advocates appearing for the respective parties and after having gone through the various contentions raised in this group of petitions and after having gone through the various Resolutions passed by the State Government from time to time pertaining to House Rent Allowance and City Local Allowance and after having gone through the aforesaid three judgments cited before the Court, the Court is of the view that in the decisions of this Court, what was challenged was the Resolution dated 18.05.2000. This challenge is not there in this group of petitions. However after 15.12.1975, several Resolutions were passed by the State Government and variations were made in the rate of HRA & CLA. The basic question still remains as to whether the petitioners whose place of duty is

in the proximity of a qualified city and who of necessity have to reside within the city may be granted HRA admissible in that city as observed in the Resolution dated 15.12.1975. That issue has already been decided by this Court with reference to the Resolution dated 18.05.2000. However, the reasoning adopted by this Court in the said two decisions is equally applicable to the facts of the present case and following the said two decisions, the Court is of the view that the challenge made by the petitioners to the subsequent Resolutions being arbitrary or discriminatory or violative of Articles 14 & 16 of the Constitution of India is not tenable. Accordingly, all these petitions are dismissed on the same parity of reasoning which was adopted by this Court in the aforesaid two decisions.

21.As far as recovery part is concerned, it is an admitted position that in all these cases, the

Court has granted stay. Not only that, by way of mandatory order, the respondent authorities were directed to pay HRA & CLA as per Resolution dated 15.12.1975. In all subsequent Resolutions, it was not clearly stated that the earlier Resolution dated 15.12.1975 was superseded or cancelled. It is only for the first time by the Resolution dated 18.05.2000 it was clearly stated that the said Resolution was cancelled. It is stated at the bar that after the said Resolution dated 18.05.2000, the petitioners have not been paid HRA or CLA as per Govt. Resolution dated 15.12.1975. It is further stated at the bar that neither the petitioners nor the State Government have approached this Court for modification of the interim relief and despite that fact, the payment of HRA and CLA as per Govt. Resolution dated 15.12.1975 was stopped and the petitioners have also not taken any action for violating the order passed by this Court. Be

that as it may, since the decision of the Hon'ble Supreme Court is very clear on the issue of recovery, the court is of the view that the payment made to the petitioners on the basis of the Resolution dated 15.12.1975 upto 18.05.2000 though under an order of this Court cannot be said to be illegal payment received by them and they should not be penalised for no fault of theirs and hence, the recovery of the said payment cannot be enforced against the petitioners. The Court is, therefore, of the view that any payment of HRA & CLA as per the Govt. Resolution dated 15.12.1975 made upto 18.05.2000 shall not be recovered from the petitioners.

22.Subject to the aforesaid directions and observations, all these petitions are accordingly disposed of. Rule discharged without any order as to costs.

S*avariya* **[K.A. PUJ, J.]**